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CATHAY BANK

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

IN RE:

MARTIFER AURORA SOLAR, LLC, a  
Nevada limited liability company,

- ☒ Affects Martifer Aurora Solar, LLC  
☒ Affects Martifer Solar USA, Inc.  
☐ Affects All Debtors

Case No. BK-S-14-10355-abl  
and BK-S-14-10357-abl

Jointly Administered under  
Case No. BK-S-14-10355-abl

Chapter 11

**SECURED CREDITOR CATHAY  
BANK'S STATEMENT OF  
OBJECTIONS TO DEBTORS'  
PROPOSED INTERIM ORDER  
PURSUANT TO 11 U.S.C. §§ 361, 362  
AND 363 AND FED. R. BANKR. P.  
4001(b) and 4001(d): (I)  
AUTHORIZING DEBTORS TO USE  
CASH COLLATERAL AND  
PROVIDE ADEQUATE  
PROTECTION; (II) GRANTING  
RELATED RELIEF; AND (III)  
SCHEDULING FINAL HEARING**

Pursuant to Local Rule 9021(b)(2)(A), secured creditor Cathay Bank (the "Bank") hereby

1 files the following objections and proposed alternatives to the Debtors' Martifer Aurora Solar,  
 2 LLC's ("Aurora") and Martifer Solar USA, Inc.'s Interim Order Pursuant to 11 U.S.C. §§ 361,  
 3 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors to Use Cash  
 4 Collateral and Provide Adequate Protection; (II) Granting Related Relief; and (III) Scheduling  
 5 Final Hearing (the "Proposed Order"):

6 **A. PERTINENT PROCEDURAL AND FACTUAL HISTORY**

7 1. On January 24, 2014, Debtor Martifer Aurora Solar, LLC filed its Motion for  
 8 Interim and Final Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P.  
 9 4001(b) and 4001(d): (I) Authorizing Debtors To Use Cash Collateral and Provide Adequate  
 10 Protection; (III) Granting Related Relief; and (III) Scheduling Final Hearing [Dkt. 25] and on  
 11 January 23, 2014, Debtor Martifer Solar USA, Inc. filed its Motion for Interim and Final Order  
 12 Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I)  
 13 Authorizing Debtors To Use Cash Collateral and Provide Adequate Protection; (III) Granting  
 14 Related Relief; and (III) Scheduling Final Hearing [Dkt. 24] (the "Motions").

15 2. On January 28, 2014, the Court held a hearing on the Motions on order shortening  
 16 time.

17 3. Subsequently thereafter, at 6:52 p.m. on Wednesday, January 29, 2014, Debtors'  
 18 counsel transmitted a proposed order for review (the "Proposed Order"). *See* the Declaration of  
 19 Natalie Cox filed concurrently herewith (the "Cox Declaration") and a copy of the transmission  
 20 email attached thereto as Exhibit 1.

21 4. After numerous email exchanges between the Bank's counsel and the Debtors'  
 22 counsel as to the form of the proposed order, counsel were unable to resolve their differences as  
 23 to whether the proposed order accurately reflected the ruling of the Court. *See* copies of the  
 24 emails attached to the Cox Declaration.

25 **B. OBJECTIONS**

26 Local Rule 9021 provides a party who disagrees that a proposed order accurately reflects  
 27 the ruling of the Court to have such disapproval noted on the lodged proposed order and five (5)  
 28 business days from the date of receipt of the proposed order to submit to the Court a detailed

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statement of objections and an alternate proposed order. *See* LR 9021(b)(2) and (3). Having received the Debtors' Proposed Order on January 29, 2014, Cathay Bank has up to and including February 5, 2014 to submit its detailed objections to the Proposed Orders and to submit its proposed alternate. Each of the Bank's objections are set forth below.

**1. THE DEBTORS' SUBMISSION OF A BUDGET NOT IN EVIDENCE IS INAPPROPRIATE AND WAS NOT PART OF THE COURT'S ORDER.**

The Bank objects to the Debtors' surreptitious incorporation of, and reliance upon, a revised, joint budget attached to the Debtors' Proposed Order as Exhibit A. Specifically, the Bank objects to the Debtors' suggestion at pgs. 6-7, paragraph 4 of the Proposed Order that the Court's decision is supported by a budget not previously submitted into evidence or even referenced in the Debtors' moving papers prior to the January 28, 2014 hearing. Paragraph four of the Order states:

4. All use of the Pre-Petition Lender's Cash Collateral shall be subject to compliance with, in addition to this Interim Order, the **Initial Cash Budget, as modified at the hearing and attached hereto as Exhibit A (the "Interim Cash Budget")**; provided, however, that compliance with the Interim Cash Budget shall be deemed satisfied if the actual aggregate expenditures the period comprising weeks two through eight (the "Interim Period") do not exceed the aggregate budgeted amount for such Interim Period as set forth in the Interim Cash Budget. The Interim Cash Budget may be modified with the written consent of both Debtors and the Pre-Petition Lender, respectively, without the need for Court approval.(Emphasis added).

The budget attached as Exhibit A to the Proposed Order **is not** the 13-week budget submitted with the Debtors' moving papers or submitted into evidence at the January 28, 2014 hearing, nor the budget upon which the Court relied in granting the Debtors' use of the Bank's cash collateral. The 13-week budget did not include any line items for Debtor Aurora, and more importantly, included two (2) payments of \$57,768 to the Bank. A copy of the 13-week Budget is attached hereto as **Exhibit 1** for reference and also appears in the docket at [Dkt. 24, Exhibit 2 and Dkt. 25, Exhibit 2]. The "new budget" attached to Debtors' Proposed Order purports to be a joint budget and cuts in nearly half (1/2) the budgeted amount of payments to the Bank to just \$26,258 each.

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1 It is apparent from the Court's own statements from the January 28, 2014 hearing, that  
 2 the Court was relying on the 13-week budget, not the newly submitted budget. In fact, the Court  
 3 specifically limited the Debtors' use of the Bank's cash collateral to that stated in the 13-week  
 4 budget as follows:

5 Third, the amount of cash collateral authorized to be used during  
 6 the interim period shall not exceed the total operating  
 7 disbursements in weeks 2 through 8 of the debtor's 13-week cash  
 flow projection budget.

8 See Transcript of January 28, 2014 hearing attached hereto as **Exhibit 2**, pg. 8, lns. 22-25. To  
 9 include a completely different budget that adds a line item for Aurora and alters payments to the  
 10 Bank is inappropriate and should not be included in the Court's written Order.

11 **2. THE COURT DID NOT GRANT THE DEBTORS A \$2 MILLION CARVE-**  
 12 **OUT THAT WOULD ALLOW THE DEBTORS TO PAY THE**  
 13 **PROFESSIONALS EXCLUSIVELY DURING THE INTERIM PERIOD**  
 14 **AND THAT WOULD PRIORITIZE CATHAY BANK'S REPLACEMENT AND**  
 15 **SUPERPRIORITY LIENS.**

16 The Bank objects to the Debtors' assertions that the Court granted the \$2 million "Carve-  
 17 Out." In particular, the Bank objects to the language set forth in the following sections of the  
 18 Proposed Order:

19 a. pg. 6, paragraph 2:

20 2. From the Petition Date through the Termination  
 21 Date (as hereinafter defined), Debtors shall be permitted to use the  
 22 Pre-Petition Lender's Cash Collateral according to the terms of this  
 23 Interim Order. Debtors shall have no right to use the Pre-Petition  
 24 Lender's Cash Collateral after the occurrence and during the  
 25 continuance of any Event of Default (as hereinafter defined),  
 26 **except as provided herein with respect to the Carve-Out (as**  
 27 **hereinafter defined).** (emphasis added).

28 b. pg. 7, paragraph 5, subsections (b) and (c):

(5)(b) replacement liens to secure the amount of any Value  
 Diminution (the "Replacement Liens"), [ ] which Replacement  
 Liens shall: (i) **be subject and junior only to the Carve-Out**  
**(defined below)**, and any Prior Liens, [ ] (ii) attach to the Cathay  
 Collateral as of the Petition Date and any other assets of Debtors  
 that are subject to a valid and perfected lien as of the Petition Date,  
 any other previously unencumbered assets of Debtors, and any  
 proceeds of the foregoing, and (iii) be in addition to the Pre-  
 Petition Lender's Claims and liens; and

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(c) to the extent permitted by Bankruptcy Code section 507(b), a superpriority claim (the “Pre-Petition Lender’s Superpriority Claim”) against Debtors’ estates, **subject and junior only to the Carve-Out**. (Emphasis added).

d. pg. 8, paragraph 6 in its entirety:

6. All claims and liens of the Pre-Petition Lender, including, without limitation, the Replacement Liens and the Pre-Petition Lender’s Superpriority Claims, shall be subject to carve-out(the “Carve-Out”) from its liens and claims, including, without limitation, the Replacement Liens, the Pre-Petition Lender’s Claims, and the Pre-Petition Lender’s Superpriority Claim, for (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 § U.S.C. 1930, and (ii) only to the extent the amounts are not available under the Cash Budget, an amount not exceeding two million dollars (\$2,000,000) in the aggregate, which amount may be used after the occurrence and during the continuation of an Event of Default (defined below), to pay the fees and expenses of professionals retained by Debtors and any statutory committee and allowed (or allowable) by the Bankruptcy Court (as to which allowed or allowable fees and expenses the Pre-Petition Lender waives any right to seek disgorgement); provided, however, that (x) Debtors shall be permitted to pay compensation and reimbursement of expenses allowed, allowable or otherwise authorized by the Bankruptcy Court and payable under Bankruptcy Code sections 330 and 331 in accordance with the [Interim](#) Cash Budget; (y) the Carve-Out shall not be reduced by the amount of any compensation and reimbursement of expenses paid or incurred (to the extent ultimately allowed or allowable by the Bankruptcy Court) prior to the occurrence of an Event of Default in respect of which the Carve-Out is invoked; and (z) the Pre-Petition Lender waive any right to seek disgorgement thereof; and provided, further, that nothing herein shall be construed to impair the ability of the Pre-Petition Lender to object to the reasonableness of any of the fees, expenses, reimbursement or compensation sought by the professionals retained by Debtors or any statutory committee.

e. pg. 10, paragraph 10:

10. Notwithstanding an Event of Default, any amounts that have been disbursed in accordance with the Interim Cash Budget and/or the **Carve-Out** shall not be subject to disgorgement in favor of the Pre-Petition Lender absent a finding of mistaken payment, bad faith or fraud. (Emphasis added).

The Debtors’ refusal—despite repeated requests and objections by Cathay Bank and the US Trustee—to remove the language from the proposed Order imposing a \$2 million “carve-out” (surcharge) which results in the forcible subordination of Cathay Bank’s prepetition liens and post-petition replacement liens to \$ 2 Million in future estate administrative expenses

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(attorney's fees) is tantamount to bad faith. The Court did NOT order such a "surcharge/carve-out" regarding the replacement liens granted for the use of the Bank's cash collateral, and the concept of a subordination of the Bank's Pre-Petition liens to \$2 Million in administrative expenses (attorneys' fees) was never even discussed at the hearing.

Regardless, the Court should not (indeed cannot) subordinate the Bank's prepetition security interests and post-petition replacement liens to administrative expenses that have not yet been incurred or allowed, and which have not been the subject of a duly noticed "surcharge" motion under section 506(c) of the Bankruptcy Code, or a duly noticed request for a "priming lien" under section 364(d), in favor of "future" administrative expenses to be incurred by professionals who have not yet even filed employment applications with the Court. Cathay Bank objects to the inclusion of any language whatsoever regarding the proposed "carve-out" (surcharge) discussed in the Motion.

The inappropriateness of the Carve-Out language in the Proposed Orders is magnified by the literal reading of the Debtors' proposed Carve-Out language which would entitle the Debtors to use the Bank's cash collateral to pay the entire amount budgeted for weeks 2-8, up to \$2 million, on professionals – not necessarily on any of the specific items, such as utilities, cited in the 13-week budget. Such a result certainly does not satisfy the requirements of Federal Rule of Bankruptcy Procedure 4001(b)(2) which limits the interim relief to such relief as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. *See* BR 4001(b)(2) and the Transcript of the 3 pm hearing on January 28, 2014, pg. 5, lns. 11-17, ("However, if the Court does authorize the use of cash collateral, it may authorize the use only of that amount -- try again -- it may authorize the use of only that amount of such cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. Federal Rule of Bankruptcy Procedure 4001(b)(2) says so. That's how I know."). As drafted, the carve-out sections ensures that the Debtors' professionals will be the only parties receiving payment before the Debtors' go out of business and liquidation ensues. There is no doubt from the record that this is not the Court's intended result.

Likewise, the record does not reflect that the Court also intended to subordinate the

Bank's adequate protection in the form of replacement and superpriority liens to the \$2 million Carve-Out. In fact, the Court ruled (at transcript p. 8, line 1) that there would be "no priming" resulting from the Court's Order. There simply is nothing in the Court's oral pronouncement, the record, or pertinent law that support such harsh treatment of the Bank. Thus, such language should not be included in the Court's written Order.

### 3. PROPOSED ORDER

The Bank proposes as an alternative, the proposed order attached hereto as **Exhibit 3 (the "Alternative Order")**. The form and substance of this alternative Order has been approved by the Office of the United States Trustee as reflective of the Court's rulings from the bench on January 28, 2014. *See* the Cox Declaration.

### C. CONCLUSION

For each of the foregoing reasons, the Bank respectfully requests that the Alternative Order be entered instead of the Order proposed by the Debtor.

DATED this 5<sup>th</sup> day of February, 2014.

**KOLESAR & LEATHAM.**

By: /s/ Natalie M. Cox, Esq.

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# EXHIBIT 1



Case 14-10357-abl Doc 24 Entered 01/23/14 23:53:02 Page 28 of 28

Unaudited

Draft- Subject to Modification

Martifer Solar USA, Inc.  
13 Week Cash Flow Projections

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Totals	
Week Beginning Date	1/21/14	1/27/14	2/3/14	2/10/14	2/17/14	2/24/14	3/3/14	3/10/14	3/17/14	3/24/14	3/31/14	4/7/14	4/14/14		[1]
Cash Receipts (Legacy)	\$ -	\$ 8,721	\$ -	\$ 47,547	\$ 283,151	\$ 910,741	\$ -	\$ -	\$ -	\$ -	\$ 1,647,404	\$ -	\$ -	\$ 2,897,564	[2]
Cash Receipts (New Busi.)	-	-	-	-	-	-	-	-	-	-	615,000	-	60,000	675,000	[3]
<b>Total Cash Receipts</b>	-	8,721	-	47,547	283,151	910,741	-	-	-	-	2,262,404	-	60,000	3,572,564	
Direct Materials + Subs (Legacy)	-	55,000	38,038	133,151	-	1,009,886	-	-	-	-	741,669	-	-	1,977,743	[2]
Direct Materials + Subs (New Busi.)	-	350,000	-	-	-	114,350	-	10,000	5,000	25,000	630,000	15,000	5,000	1,154,350	[3]
<b>Total Dir. Mat. Disbursements</b>	-	405,000	38,038	133,151	-	1,124,236	-	10,000	5,000	25,000	1,371,669	15,000	5,000	3,132,093	
Payroll	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	1,128,234	[4]
Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Insurance	-	43,500	-	-	-	43,500	-	-	-	43,500	-	-	-	130,500	
Expense Reimbursements	-	36,000	-	-	-	36,000	-	-	-	36,000	-	-	-	108,000	
Fuel	-	-	3,700	-	-	-	3,700	-	-	-	3,700	-	-	11,100	
Rent	-	22,050	-	-	-	22,050	-	-	-	22,050	-	-	-	66,150	
Utilities	-	12,000	-	-	-	12,000	-	-	-	12,000	-	-	-	36,000	
Other Expenses	-	-	12,000	-	-	-	12,000	-	-	-	12,000	-	-	36,000	
IT Services	-	10,300	-	-	-	10,300	-	-	-	10,300	-	-	-	30,900	
Outside Services	-	-	38,000	-	-	-	38,000	-	-	-	38,000	-	-	114,000	
Vehicle Leases	-	-	8,250	-	-	-	8,250	-	-	-	8,250	-	-	24,750	
Contingency	-	7,500	7,500	132,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	215,000	[5]
<b>Total Operating Disbursements</b>	161,176	131,350	230,626	132,500	168,676	131,350	230,626	7,500	168,676	131,350	230,626	7,500	168,676	1,900,634	
<b>Net Operating Cash Flows</b>	(161,176)	(527,629)	(268,664)	(218,104)	114,475	(344,845)	(230,626)	(17,500)	(173,676)	(156,350)	660,109	(22,500)	(113,676)	(1,460,164)	
Debtor's Legal Fees (Ch.11)	-	-	-	-	-	-	-	-	-	-	-	-	370,000	370,000	
Debtor's FA Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	75,000	75,000	
Debtor's IB Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	[6]
Debtor's Legal Fees (Other)	-	-	-	-	-	-	-	-	-	-	-	-	245,000	245,000	
Committee's Fees	-	-	-	-	-	-	-	-	-	-	-	-	50,000	50,000	
Chapter 11 UST Fees	-	-	-	-	-	-	-	-	-	-	-	-	6,500	6,500	
<b>Total Professional Fees</b>	-	-	-	-	-	-	-	-	-	-	-	-	746,500	746,500	[7]
Interest Expense- Secured Debt	-	57,768	-	-	-	57,768	-	-	-	57,768	-	-	-	173,305	[8]
Net Cash Flow Before DIP Draws	(161,176)	(585,398)	(268,664)	(218,104)	114,475	(402,613)	(230,626)	(17,500)	(173,676)	(214,118)	660,109	(22,500)	(860,176)	(2,379,969)	
Beginning Cash	505,700	505,700	220,302	211,638	268,534	383,009	264,746	264,119	256,619	262,943	263,825	923,934	901,434	505,700	[9]
DIP Facility Draws	161,176	300,000	260,000	275,000	-	284,350	230,000	10,000	180,000	215,000	-	-	160,000	2,075,526	[10]
<b>Net Ending Cash</b>	<b>\$ 505,700</b>	<b>\$ 220,302</b>	<b>\$ 211,638</b>	<b>\$ 268,534</b>	<b>\$ 383,009</b>	<b>\$ 264,746</b>	<b>\$ 264,119</b>	<b>\$ 256,619</b>	<b>\$ 262,943</b>	<b>\$ 263,825</b>	<b>\$ 923,934</b>	<b>\$ 901,434</b>	<b>\$ 201,257</b>	<b>\$ 201,257</b>	

**Notes:**

[1] All dates represent the beginning Monday, except for Week 1, the beginning of which is the Petition Date

[2] Martifer restructured its sales team in December 2013 with a mandate that all new contracts generate positive cash flows. "Legacy" business represents those contracts in place prior to this restructuring

[3] While all new business has been calculated as cash flow positive, contracts typically require initial cash outlays up to several months prior to recognition of cash receipts, as is common industry practice

[4] Week 1 payroll is assumed to be paid through the DIP Facility (i.e. Martifer Solar, Inc. as DIP Lender) in advance of finalization of the DIP Facility loan agreement

[5] Assumes amounts due to critical vendors of approximately \$125,000 are paid by Week 4 pursuant to Section 105 or other provisions of the Bankruptcy Code

[6] Investment Banking fees of \$300,000 contemplates a potential exit financing transaction. Should this transaction not materialize within this budget period, such corresponding fees will not be paid

[7] Professionals' monthly invoices are assumed to be paid at 80% of fees and 100% of expenses (for January 2014 through March 2014 invoices). The 20% holdbacks are assumed to be paid upon Plan Confirmation.

[8] Assumes default interest rate at 11% per annum based on a principal balance of \$6.3 million

[9] Beginning cash balance per the Debtor cash balance as of 1/21/14.

[10] DIP Facility draws relate to a pending Debtor in Position facility. All related interest is accrued. Draws on the DIP Facility are projected for any week in which the cash balance is projected to drop below \$200,000

Printed: Jan 23, 2014

Unaudited

Draft- Subject to Modification

**Martifer Solar USA, Inc.**  
**13 Week Cash Flow Projections**

Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	Totals	
Week Beginning Date	1/21/14	1/27/14	2/3/14	2/10/14	2/17/14	2/24/14	3/3/14	3/10/14	3/17/14	3/24/14	3/31/14	4/7/14	4/14/14		[1]
Cash Receipts (Legacy)	\$ -	\$ 8,721	\$ -	\$ 47,547	\$ 283,151	\$ 910,741	\$ -	\$ -	\$ -	\$ -	\$ 1,647,404	\$ -	\$ -	\$ 2,897,564	[2]
Cash Receipts (New Busi.)	-	-	-	-	-	-	-	-	-	-	615,000	-	60,000	675,000	[3]
<b>Total Cash Receipts</b>	-	8,721	-	47,547	283,151	910,741	-	-	-	-	2,262,404	-	60,000	3,572,564	
Direct Materials + Subs (Legacy)	-	55,000	38,038	133,151	-	1,009,886	-	-	-	-	741,669	-	-	1,977,743	[2]
Direct Materials + Subs (New Busi.)	-	350,000	-	-	-	114,350	-	10,000	5,000	25,000	630,000	15,000	5,000	1,154,350	[3]
<b>Total Dir. Mat. Disbursements</b>	-	405,000	38,038	133,151	-	1,124,236	-	10,000	5,000	25,000	1,371,669	15,000	5,000	3,132,093	
Payroll	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	-	161,176	1,128,234	[4]
Commissions	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Insurance	-	43,500	-	-	-	43,500	-	-	-	43,500	-	-	-	130,500	
Expense Reimbursements	-	36,000	-	-	-	36,000	-	-	-	36,000	-	-	-	108,000	
Fuel	-	-	3,700	-	-	-	3,700	-	-	-	3,700	-	-	11,100	
Rent	-	22,050	-	-	-	22,050	-	-	-	22,050	-	-	-	66,150	
Utilities	-	12,000	-	-	-	12,000	-	-	-	12,000	-	-	-	36,000	
Other Expenses	-	-	12,000	-	-	-	12,000	-	-	-	12,000	-	-	36,000	
IT Services	-	10,300	-	-	-	10,300	-	-	-	10,300	-	-	-	30,900	
Outside Services	-	-	38,000	-	-	-	38,000	-	-	-	38,000	-	-	114,000	
Vehicle Leases	-	-	8,250	-	-	-	8,250	-	-	-	8,250	-	-	24,750	
Contingency	-	7,500	7,500	132,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	215,000	[5]
<b>Total Operating Disbursements</b>	161,176	131,350	230,626	132,500	168,676	131,350	230,626	7,500	168,676	131,350	230,626	7,500	168,676	1,900,634	
<b>Net Operating Cash Flows</b>	(161,176)	(527,629)	(268,664)	(218,104)	114,475	(344,845)	(230,626)	(17,500)	(173,676)	(156,350)	660,109	(22,500)	(113,676)	(1,460,164)	
Debtor's Legal Fees (Ch.11)	-	-	-	-	-	-	-	-	-	-	-	-	370,000	370,000	
Debtor's FA Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	75,000	75,000	
Debtor's IB Fees (Ch. 11)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	[6]
Debtor's Legal Fees (Other)	-	-	-	-	-	-	-	-	-	-	-	-	245,000	245,000	
Committee's Fees	-	-	-	-	-	-	-	-	-	-	-	-	50,000	50,000	
Chapter 11 UST Fees	-	-	-	-	-	-	-	-	-	-	-	-	6,500	6,500	
<b>Total Professional Fees</b>	-	-	-	-	-	-	-	-	-	-	-	-	746,500	746,500	[7]
Interest Expense- Secured Debt	-	57,768	-	-	-	57,768	-	-	-	57,768	-	-	-	173,305	[8]
Net Cash Flow Before DIP Draws	(161,176)	(585,398)	(268,664)	(218,104)	114,475	(402,613)	(230,626)	(17,500)	(173,676)	(214,118)	660,109	(22,500)	(860,176)	(2,379,969)	
Beginning Cash	505,700	505,700	220,302	211,638	268,534	383,009	264,746	264,119	256,619	262,943	263,825	923,934	901,434	505,700	[9]
DIP Facility Draws	161,176	300,000	260,000	275,000	-	284,350	230,000	10,000	180,000	215,000	-	-	160,000	2,075,526	[10]
<b>Net Ending Cash</b>	<b>\$ 505,700</b>	<b>\$ 220,302</b>	<b>\$ 211,638</b>	<b>\$ 268,534</b>	<b>\$ 383,009</b>	<b>\$ 264,746</b>	<b>\$ 264,119</b>	<b>\$ 256,619</b>	<b>\$ 262,943</b>	<b>\$ 263,825</b>	<b>\$ 923,934</b>	<b>\$ 901,434</b>	<b>\$ 201,257</b>	<b>\$ 201,257</b>	

**Notes:**

[1] All dates represent the beginning Monday, except for Week 1, the beginning of which is the Petition Date

[2] Martifer restructured its sales team in December 2013 with a mandate that all new contracts generate positive cash flows. "Legacy" business represents those contracts in place prior to this restructuring

[3] While all new business has been calculated as cash flow positive, contracts typically require initial cash outlays up to several months prior to recognition of cash receipts, as is common industry practice

[4] Week 1 payroll is assumed to be paid through the DIP Facility (i.e. Martifer Solar, Inc. as DIP Lender) in advance of finalization of the DIP Facility loan agreement

[5] Assumes amounts due to critical vendors of approximately \$125,000 are paid by Week 4 pursuant to Section 105 or other provisions of the Bankruptcy Code

[6] Investment Banking fees of \$300,000 contemplates a potential exit financing transaction. Should this transaction not materialize within this budget period, such corresponding fees will not be paid

[7] Professionals' monthly invoices are assumed to be paid at 80% of fees and 100% of expenses (for January 2014 through March 2014 invoices). The 20% holdbacks are assumed to be paid upon Plan Confirmation.

[8] Assumes default interest rate at 11% per annum based on a principal balance of \$6.3 million

[9] Beginning cash balance per the Debtor cash balance as of 1/21/14.

[10] DIP Facility draws relate to a pending Debtor in Position facility. All related interest is accrued. Draws on the DIP Facility are projected for any week in which the cash balance is projected to drop below \$200,000

Printed: Jan 23, 2014

# EXHIBIT 2

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4	In re: MARTIFER SOLAR USA, INC.,	)	E-Filed: 01/30/14
		)	
5	Debtor.	)	Case No.
		)	BK-S-14-10357-ABL
6		)	Chapter 11
		)	
7	In re: MARTIFER AURORA SOLAR, LLC,	)	
		)	
8	Debtor.	)	Case No.
		)	BK-S-14-10355-ABL
9		)	Chapter 11
		)	
10	MARTIFER AURORA SOLAR, LLC, et al.,	)	
		)	
11	Plaintiffs,	)	
		)	
12	vs.	)	Adversary No.
		)	BK-S-14-01014-ABL
13	CATHAY BANK,	)	
		)	
14	Defendant.	)	
		)	

15

16 PARTIAL TRANSCRIPT OF PROCEEDINGS

17 OF

18 JUDGE'S RULING

19 VOLUME 1

20 BEFORE THE HONORABLE AUGUST B. LANDIS

21 UNITED STATES BANKRUPTCY JUDGE

22 Tuesday, January 28, 2014

23 9:30 a.m.

24 Court Recorder: Helen Smith

25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

## 1 APPEARANCES:

2 For Martifer Solar BRETT A. AXELROD, ESQ.  
3 USA, Inc., and NATHAN SCHULTZ, ESQ. (phonetic)  
4 Martifer Aurora Fox Rothschild, LLP  
Solar, LLC: 3800 Howard Hughes Parkway  
Suite 500  
Las Vegas, Nevada 89169

5 For Cathay Bank: NATALIE M. COX, ESQ.  
6 Kolesar & Leatham  
400 South Rampart Boulevard  
7 Las Vegas, Nevada 89145

8 REED S. WADDELL, ESQ.  
9 MICHAEL G. FLETCHER, ESQ.  
Frاندzel Robins Bloom & Csato, L.C.  
6500 Wilshire Boulevard  
10 17th Floor  
Los Angeles, California 90048

11 For U.S. Trustee: MICHAL J. BLOOM, ESQ.  
12 Office of the United States Trustee  
300 South Las Vegas Boulevard  
13 Suite 4300  
Las Vegas, Nevada 89101

14 For Martifer Solar, SAMUEL A. SCHWARTZ, ESQ.  
15 Inc.: Schwartz Law Firm  
6623 Las Vegas Boulevard South  
16 Suite 300  
Las Vegas, Nevada 89119

17 Also Present: KLAUS BERNHARDT (phonetic)  
18 ROLAND KISER (phonetic)  
19 AVI MUNTAR (phonetic)  
JAMES WONG (phonetic)  
20 PEDRO PEREIRA (phonetic)

21  
22  
23  
24  
25

1 (Court reconvened at 03:02:16 p.m.)

2 THE CLERK: Bankruptcy court is back in session.

3 THE COURT: Have a seat.

4 (Colloquy not on the record.)

5 THE COURT: We're back on the record in the  
6 matters of in re Martifer Solar USA, Inc., Chapter 11  
7 Case No. 14-10357, and I'll try my best to say USA when I refer  
8 to that case.

9 The second is in re Martifer Aurora Solar, LLC,  
10 Chapter 11 No. 14-10355 -- I'll refer to that case as Aurora --  
11 and Martifer Aurora Solar, LLC, versus Cathay Bank,  
12 Adversary No. 14-01014, and I'll talk about that as the  
13 adversary.

14 We had arguments and evidence presented this morning. The  
15 matters before the Court remaining for resolution are the  
16 following: Debtors' separate motions for interim and final  
17 order pursuant to 11, USC, Section 361, 362, and 363, and  
18 Federal Rule of Bankruptcy Procedure 4001(b) and 4001(d),  
19 Roman numeral I, authorizing debtors to use cash collateral and  
20 provide adequate protection, Roman numeral II, granting related  
21 relief, and Roman number III, scheduling final hearing -- I'll  
22 refer to those in the collective as the cash collateral  
23 motions -- and opposition thereto by Cathay Bank and the  
24 United States Trustee for Region 17.

25 Second, USA's motion for an order, one, prohibiting utility

1 providers from altering, refusing, or discontinuing service,  
2 two, authorizing ordinary course payments to utility providers,  
3 three, deeming utility providers adequately assured of future  
4 performance, and, four, establishing procedures for determining  
5 requests for additional adequate assurance and the limited  
6 oppositions thereto. I'll call that the utilities motion.

7 Third, Debtors' separate motions for order pursuant to  
8 11, USC, Section 364 and Federal Rule of Bankruptcy Procedure  
9 4001(c), Roman numeral I, authorizing debtors to obtain  
10 postpetition financing, Roman numeral II, granting related  
11 relief, and, Roman numeral III, scheduling final hearing. I'll  
12 refer to those in the collective as the DIP financing motions.

13 And last, a motion for temporary restraining order and  
14 order to show cause why a preliminary injunction should not  
15 issue the TRO motion.

16 The Court has concluded that it has jurisdiction over the  
17 debtors' Chapter 11 reorganization cases and the adversary  
18 proceeding pursuant to 28, USC, Section 1334, 28, USC,  
19 Section 157(a), and U.S. District Court Local Rule 1001(b)(1).

20 As to the motions pending before the Court, the Court  
21 concludes that the cash collateral motions are core proceedings  
22 pursuant to 28, USC, Section 157(b)(2)(A) and (M).

23 The utilities motion is a core proceeding pursuant to  
24 28, USC, Section 157(b)(2)(A) and (O). The DIP financing  
25 motions are core proceedings pursuant to 28, USC,



1 Section 157(b)(2)(A) and (D), and the TRO motion is a core  
2 proceeding pursuant to 28, USC, Section 157(b)(2)(A) and (O).

3 We'll address the cash collateral motions first. The  
4 cash collateral motions were filed on January 23rd in the USA  
5 case, Docket Entry No. 24, and January 24th in Aurora,  
6 Docket Entry No. 25.

7 Today's preliminary hearing was held at the debtors'  
8 request less than 14 days from the date when the cash  
9 collateral motions were served.

10 Today's preliminary hearing is authorized pursuant to  
11 Federal Rule of Bankruptcy Procedure 4001(b)(2). However, if  
12 the Court does authorize the use of cash collateral, it may  
13 authorize the use only of that amount -- try again -- it may  
14 authorize the use of only that amount of such cash collateral  
15 as is necessary to avoid immediate and irreparable harm to the  
16 estate pending a final hearing. Federal Rule of Bankruptcy  
17 Procedure 4001(b)(2) says so. That's how I know.

18 As debtors in possession, the debtors are authorized to  
19 operate their respective businesses under the bankruptcy code,  
20 under Section 1108 of the bankruptcy code.

21 The bankruptcy code provides that a debtor in possession  
22 may use cash collateral only with the secured creditor's  
23 consent or if the Court after notice and hearing authorizes  
24 such use, and you can see there at Section 363(c)(2) of the  
25 bankruptcy code.

1 Absent consent, Courts look to whether a secured creditor  
2 has adequate protection of its interest in cash collateral as  
3 the condition to authorizing its use. Section 363(e) provides  
4 that.

5 You can also read United Savings Association versus  
6 Timbers of Inwood Forest Association, 484 U.S. 365 at 369  
7 through 73 back in 1988.

8 In addition, Section 362(d)(1) enables a party with an  
9 interest in property of the estate such as cash collateral  
10 to obtain relief from the automatic stay if there ultimately  
11 proves to be a lack of adequate protection. See  
12 Section 362(d)(1).

13 Based upon the record that was presented at the hearings  
14 this morning, the arguments of counsel, the Court concludes  
15 that the debtors have carried their burden of proving the need  
16 to use cash collateral due to the scope of the secured claim  
17 held by Secured Creditor Cathay Bank.

18 The Court finds that the record before it establishes  
19 plainly that Secured Creditor Cathay Bank does not consent to  
20 the use of its cash collateral. As a result, debtors can only  
21 use Cathay Bank's cash collateral if the Court authorizes the  
22 debtors to do so.

23 So the crux of the issue today is a straightforward one  
24 almost. It's whether Cathay Bank's interest in cash collateral  
25 has been afforded adequate protection through the proposal

1 embodied in the cash collateral motions and the proposed order.

2 The term "adequate protection" is not defined in the  
3 bankruptcy code, but Section 361 does provide three  
4 nonexclusive examples of how adequate protection may be  
5 provided in a cash collateral context.

6 First, requiring the debtor in possession to make a cash  
7 payment or periodic cash payments to the affected secured  
8 creditor to the extent the use of cash collateral results in a  
9 decrease in the value of the secured creditor's interest.

10 Second, providing the secured creditor with an additional  
11 replacement lien to the affected secured creditor to the extent  
12 the use of cash collateral results in a decrease in the value  
13 of the secured creditor's interest.

14 And last, otherwise fashioning a method of providing a  
15 creditor with the indubitable equivalent of its interest in  
16 cash collateral.

17 Based upon the record before it developed in the hearing  
18 this morning, the Court concludes that the debtors' cash  
19 collateral motions do afford sufficient adequate protection to  
20 Cathay Bank to allow the debtors to use cash collateral on an  
21 interim basis pending a final hearing.

22 The Court finds that the motions provide for adequate  
23 protection payments as detailed in the budget. The Court finds  
24 that the motion provides for replacement liens. The Court  
25 finds that the cash collateral motions provide for the

1       prepetition lender's superpriority claim. No priming here.

2           Most importantly, Cathay's secured claim is protected by a  
3       substantial equity cushion of not less than 20 percent  
4       depending on the valuation method that you use. Those findings  
5       are substantiated by the declarations that were admitted into  
6       evidence this morning.

7           Case law has almost uniformly held that an equity cushion  
8       of 20 percent or more constitutes adequate protection.  
9       Suntrust Bank versus Den-Mark Construction, Inc., in re  
10      Den-Mark Construction, Inc., 406 Bankruptcy Reporter 683,  
11      700 at note 24 from the Eastern District of North Carolina at  
12      2009, citing James River Associates, 148 Bankruptcy Reporter  
13      790, 796, out of the Eastern District of Virginia, 1992.

14          The Court therefore concludes that the relief requested in  
15      the cash collateral motions is appropriate and will be granted  
16      on an interim basis pending a final hearing with the following  
17      restrictions: First, the final hearing shall be held on  
18      March 10th, 2014, at 9:30 a.m.

19          Second, the debtors' authorization to use cash collateral  
20      pursuant to this interim order shall expire on March 10th  
21      of 2014.

22          Third, the amount of cash collateral authorized to be used  
23      during the interim period shall not exceed the total operating  
24      disbursements in weeks 2 through 8 of the debtor's 13-week cash  
25      flow projection budget.

1 Fourth, the replacement liens afforded to Cathay Bank shall  
2 not extend to avoidance actions. Fifth, neither the debtor nor  
3 any creditor committee is restricted from using cash collateral  
4 to challenge perfection, validity, priority, amount, or  
5 enforceability of any secured claim.

6 Counsel for the debtor will prepare the order. It will  
7 modify the order that was uploaded with the motion. You will  
8 circulate it for review by parties in interest who have  
9 appeared at this hearing in connection with the -- as required  
10 by our local rules.

11 That's my ruling with respect to the cash collateral  
12 motion. Next up is the utilities motion. We took the  
13 utilities motion and heard argument this morning.

14 We trailed the decision with respect to the utilities  
15 motion until we resolved the question of cash collateral and  
16 debtor-in-possession financing. As the debtor is now  
17 authorized to cash collateral, USA's utility motion is also  
18 granted.

19 Counsel, you will prepare -- debtors' counsel will prepare  
20 the appropriate order and again will comply with local rules.

21 That takes us to debtor-in-possession financing. The  
22 debtor-in-possession financing motions are difficult. The  
23 debtors have proven that they are unable to obtain secured  
24 credit under Section 503(b)(1).

25 As a result, the Court may authorize obtaining credit in

1 certain circumstances established by the code under 364(c)(2)  
2 and (c)(3).

3 More particularly, the proof that was submitted in the  
4 form of the declarations show that the debtor has talked to  
5 numerous -- 20 or more -- proposed lenders who are not willing  
6 to lend and the parent refused to lend interest free. So the  
7 question then becomes, well, can we, in fact, borrow money on a  
8 postpetition basis.

9 Pursuant to 11, USC, Section 364(c)(2), you can borrow  
10 money -- the debtors could -- secured by a lien on property of  
11 the estate that is not otherwise subject to a lien.

12 The problem here is Cathay has a primary lien on all of the  
13 assets, so that section isn't available to allow the debtors to  
14 borrow money on a postpetition basis which leaves us only with  
15 Section 364(c)(3), obtaining secured credit in the form of a  
16 junior lien on property of the estate that is subject to a  
17 lien. That has to be the focus of what we're talking about in  
18 this particular instance under the facts before the Court.

19 The elements with respect to obtaining Section 364(c)(3)  
20 financing are as follows: First, the relief sought must be  
21 necessary, essential, and appropriate. This is the debtors'  
22 burden.

23 Based on the hearing this morning, it is not clear that  
24 this is necessary. And when I say this, I'm talking about  
25 postpetition financing.

1           The Aurora project funds are not included in the budget.  
2       As a result, this Court is unable to say that, in fact,  
3       borrowing money is necessary if perhaps -- and the Court simply  
4       doesn't know because there's a pilosity of evidence -- the  
5       Aurora project funds are sufficient to provide financing for  
6       some or all of the debtor's needs postpetition. It is not  
7       clear that it was appropriate either. The budget isn't  
8       accurate.

9           With the admission of the Aurora revenues, the Court is  
10       left in a quandary. And, candidly, I think counsel for  
11       Cathay Bank said it best. I'm confused.

12           Second, the best interest of the estate. It may or may not  
13       be in the best interest of the estate to allow borrowing under  
14       the terms that are proposed by the debtor's motions here.

15           Again, it's almost impossible without knowing the financial  
16       condition and wherewithal of Debtor Aurora to determine  
17       whether, in fact, it's in the best interest of the estate.

18           Third, the terms and conditions are reasonable. The  
19       debtors did a good job here. The terms are not unreasonable.  
20       And, fourth, the loan agreement was negotiated in good faith  
21       and at arm's length.

22           Here, the lien -- or excuse me -- the debtor in possession  
23       proposed financing was negotiated with a parent who had  
24       previously lent money to the subsidiary with no interest. It's  
25       not clear that the negotiations were at arm's length given the



1 current parent/subsidiary relationship.

2 It's also a question as to the good faith given the absence  
3 of financial information with respect to Debtor Aurora and its  
4 financial condition.

5 The four factors that I've identified for you are laid out  
6 in in re World Com, Inc., (phonetic) 2002 Westlaw 1732646 at  
7 star 3 (phonetic), out of the Southern District of New York  
8 in 2002. You can also look at Mid-State Raceway, Inc.,  
9 323 Bankruptcy Reporter 40 at 60 out of the bankruptcy court  
10 for the Northern District of New York in 2005.

11 As a result when you consider each of the four factors that  
12 are required to authorize and permit there to be postpetition  
13 financing pursuant to Section 364(c) (3), I find that the debtor  
14 has failed to carry its burden of establishing that it is  
15 entitled to such financing in this particular case.

16 This is an interim finding. It is without prejudice to the  
17 debtors' ability to renew the motion and seek a final order  
18 with respect to debtor-in-possession financing at a future  
19 time. And if the debtor chooses to pursue such an avenue, the  
20 March 10 hearing date would be available.

21 It leaves us then with the question regarding the motion  
22 for a temporary restraining order. Here the plaintiffs  
23 requested that Defendant Cathay Bank be enjoined from  
24 prosecuting a lawsuit denominated Case No. SC-121853 (phonetic)  
25 -- I'll call that the state court action -- in the

1 Superior Court of California for the County of Los Angeles in  
2 the Western District.

3 More specifically, the plaintiffs seek to prevent Cathay  
4 from taking action against nondebtor guarantors on a debt owed  
5 by the plaintiffs to Cathay.

6 The guarantors, Martifer Solar, Inc., and Martifer Solar  
7 USA, are corporate parents and proposed postpetition are debtor  
8 in possession lenders to the plaintiffs.

9 Essentially, Plaintiffs argue that the guarantors will not  
10 be able to defend themselves in the state court action while  
11 simultaneously providing financial support during the  
12 plaintiffs' reorganization.

13 According to the plaintiffs' complaint and the TRO motion,  
14 a prerequisite of the guarantors debtor-in-possession financing  
15 is the granting of a stay of the state court action against  
16 them.

17 Thus, the requested relief in the TRO motion is dependant  
18 on the ruling regarding the plaintiffs' motion for an order  
19 authorizing debtors to obtain postpetition financing.

20 Since the Court has denied the plaintiffs' postpetition  
21 financing motions without prejudice, the Court will also deny  
22 the TRO motion without prejudice.

23 More specifically, the Court finds the plaintiffs have  
24 failed to carry their burden for a preliminary injunction. The  
25 standard for granting a preliminary injunction balances a

1 plaintiff's likelihood of success against the relative hardship  
2 to the parties.

3 The Ninth Circuit has recognized two different sets of  
4 criteria for preliminary injunctive relief. Under the  
5 traditional test, a plaintiff must show, first, a strong  
6 likelihood of success on the merits, second, the possibility of  
7 irreparable injury to Plaintiff if preliminary relief is not  
8 granted, third, the balance of hardships favoring the  
9 plaintiffs, and, fourth, the advancement of the public interest  
10 in certain cases.

11 The alternative test requires a plaintiff demonstrate  
12 either a combination of probable success on the merits and the  
13 possibility of irreparable injury or that serious questions are  
14 raised and the balance of hardships tips sharply in its favor.

15 These two formulations represent two points on a sliding  
16 scale in which the required degree of irreparable harm  
17 increases as the probability of success decreases.

18 They are not separate tests, but rather outer reaches of a  
19 single continuum. You can read Taylor versus Westly,  
20 488 F .3d 1197 at 1200, Ninth Circuit, 2007.

21 As to the plaintiffs' likelihood or probability of success,  
22 the record is deficient regarding successful reorganization.  
23 The plaintiffs assert that they have one impaired consenting  
24 creditor, General Freight Service, LLC, are planning to pay  
25 Cathay in full, and are anticipating business that will allow

1 them to prosper in the future if given the opportunity.

2 These few assertions even if taken as true do not weigh in  
3 favor of the plaintiffs when viewing the holes in the record.

4 At this juncture of the case -- and we are at the first-day  
5 stage -- there are no schedules providing specific information  
6 on the plaintiffs' finances to gain perspectives as to  
7 liabilities and assets.

8 The only financial document the Court has on record is a  
9 13-week cash flow projection for USA which does not include any  
10 income from Aurora and shows a significant loss of  
11 net-operating cash flow when eliminating the denied DIP  
12 financing.

13 Based on the limited information available at this time,  
14 the Court cannot begin to evaluate the chances of Plaintiffs'  
15 successful reorganization and therefore the element of success  
16 weighs against the requested relief.

17 Regarding the possibility of irreparable harm, there has  
18 been insufficient showing of imminent action in the state court  
19 action or steps to attach the assets of guarantors.

20 In addition, the plaintiffs' allegations that the  
21 guarantors must choose between two forums is not an irreparable  
22 harm because the Court has denied the DIP financing and so any  
23 contribution to the plaintiffs would be voluntary.

24 Based on the available information, the status quo will  
25 remain the same in the state court action for the time being.

1 Inconsistency of judgment has not been shown to be an issue  
2 because Plaintiffs acknowledge that their obligation to Cathay  
3 is 6.4 million dollars. And even if held responsible for  
4 indemnification, this is the amount that would be owed to the  
5 guarantors.

6 The costs of the guarantors' defense in the state court  
7 action have not been estimated or projected, and so the record  
8 is deficient as to whether or not those expenses would result  
9 in the defeat of a reorganization effort. There's been no  
10 demonstration of risk to property or rights that cannot be  
11 remedied.

12 The balance of hardships does not favor the plaintiffs  
13 because they have been permitted to use cash collateral  
14 mitigating the risk of an imminent shutdown of operations. The  
15 plaintiffs have an opportunity to move for DIP financing  
16 approval in the future if it becomes necessary.

17 Preventing Cathay from pursuing its rights against  
18 nondebtor guarantors does create a hardship that the Court  
19 acknowledges. However, the public interest is served by  
20 reorganization through maximized payment to creditors and  
21 preservation of businesses and jobs.

22 Bankruptcy code protection, however, is extended to  
23 debtors, and guarantors here are not debtors. The plaintiffs'  
24 argument for preventing Cathay from pursuing its rights against  
25 the nondebtor guarantors is not persuasive. This factor is

1 neutral in the preliminary-injunction analysis.

2 The question presented through the TRO motion are not  
3 serious in that they are common in bankruptcy, funding issues  
4 and litigation to enforce debts. The balance of hardships as  
5 previously noted does not tip strongly in favor of the  
6 plaintiffs.

7 When viewed as a whole under the four-factor test, the  
8 plaintiffs have not met their burden at this juncture for a  
9 preliminary injunction.

10 In addition, considering the sliding scale of harm and  
11 success or serious questions of hardships a temporary  
12 restraining order enjoining the bank is not warranted at this  
13 time.

14 Therefore, the TRO motion is denied without prejudice, and  
15 that is the Court's ruling with respect to the final matter  
16 before it. Those will be the Court's orders.

17 With respect to the orders regarding debtor-in-possession  
18 financing and the TRO, the way that we do it in this district,  
19 Counsel, is the prevailing party prepares the proposed orders.

20 As a result with respect to the motions for  
21 debtor-in-possession financing and for the TRO, counsel for  
22 Cathay Bank is directed to draft the appropriate orders, comply  
23 with the local rules regarding circulation, and upload them for  
24 the Court to enter.

25 With that, there being nothing further pending before the

1 Court at this point in time, I think we've made it all the way  
2 through all of the first-day motions that were filed within the  
3 last roughly 96 hours in this district.

4 The parties at this point in time should have a sense of  
5 the direction that the case can go and whether or not they need  
6 to take appropriate action in the future.

7 I'm sure you know how to find me, and I'm sure you know how  
8 to get the Court's attention in the event that there are  
9 subsequent hearings that we need to address.

10 MR. WADDELL: Question --

11 THE COURT: Counsel?

12 MR. WADDELL: -- your Honor. Did the Court -- well,  
13 the Court didn't make any -- or read any finding --

14 THE COURT RECORDER: I'm sorry. Would you state your  
15 appearance, please.

16 MR. WADDELL: Oh, sorry. Reed Waddell,  
17 Franzel Robins Bloom & Csato on behalf of Cathay Bank. Did the  
18 Court draw any distinction between the money that was deposited  
19 in the California Bank & Trust account which was a claim of not  
20 property of the estate and the collections that come in for  
21 legacy collections or otherwise to the debtor?

22 THE COURT: No.

23 MR. WADDELL: Thank you.

24 THE COURT: Anything further? Ms. Axelrod.

25 MS. AXELROD: Your Honor, I promised you earlier



1 today a preview of what would be coming forward prior to the  
2 next omnibus hearing date that the debtor finds the need to  
3 file.

4 One will be, you know, either a renewed motion or a motion  
5 for reconsideration to set forth the Aurora evidence for the  
6 Court.

7 And we apologize and it will be, of course, you know, in  
8 the moving papers, but it did not push the needle in  
9 materiality, so we'll get that for the Court.

10 THE COURT: Okay.

11 MS. AXELROD: I did have one question regarding the  
12 DIP financing for USA because it was filed in that separate  
13 case and just adopt the findings as to Aurora regarding the  
14 necessity that the Court made?

15 THE COURT: Run that by me again, Counsel. I'm  
16 sorry. I lost track of what you were trying to get you me to  
17 do for you.

18 MS. AXELROD: Sure, your Honor. When you were  
19 reading your findings when it came to the DIP financing --

20 THE COURT: Um-h'm.

21 MS. AXELROD: -- the Court had mentioned Aurora  
22 specifically and that lack of financial information dealing  
23 with Aurora but had not mentioned regarding the USA. And just  
24 for my clarity that it was -- should I adopt it to both of the  
25 cases, your Honor?

1 THE COURT: Yes.

2 MS. AXELROD: And then will be coming up, your Honor,  
3 is the wage motion since that is a necessity that we will be  
4 filing, and we anticipate to file that in the next day.

5 THE COURT: Okay.

6 MS. AXELROD: And then we also have for new  
7 construction we'll be filing a procedures motion on how to deal  
8 with contracts going forward and doing it more as a global  
9 procedure to be approved by the Court and for parties in  
10 interest to weigh in.

11 THE COURT: Very well, Counsel. Thank you for the  
12 advance sort of foreshadowing. I think that's helpful. We'll  
13 plan accordingly, and we'll be prepared in order to address the  
14 needs of the debtors and parties in interest as those matters  
15 come up.

16 We're at first-day motions here. I think we're at a point  
17 now where probably things will become a little more clear with  
18 respect to what needs to be done, but I'll leave that in your  
19 capable hands.

20 MS. AXELROD: Thank you, your Honor.

21 THE COURT: Counsel?

22 MR. WADDELL: Your Honor, at the risk of asking for  
23 an advisory opinion, do I need to file a pro hac vice  
24 application for the adversary? Do you know? Does anybody here  
25 know?

1 THE COURT: Counsel, the answer is is that if you  
2 were admitted in the main case --

3 MR. WADDELL: That's what I thought.

4 THE COURT: -- I am confident that there will not be  
5 a problem with respect to appearing in the adversary. That  
6 having been said, out of an abundance of caution just do it.  
7 It's easy and it will be granted in the ordinary course as the  
8 one in the main case was I'm sure.

9 MR. WADDELL: That's fine. Thank you, your Honor.

10 THE COURT: Any other matters pending before the  
11 Court at this time? Seeing none, we're adjourned.

12 THE CLERK: Thank you, your Honor.

13 All rise.

14 (Court concluded at 03:28:40 p.m.)  
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25

1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.  
4

5  
6 /s/ Jennie Ellis

01/30/14

7 Jennie Ellis, Transcriptionist

Date

# EXHIBIT 3

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Attorneys for Creditor  
 CATHAY BANK

# **UNITED STATES BANKRUPTCY COURT**

## **DISTRICT OF NEVADA**

IN RE:

MARTIFER AURORA SOLAR, LLC, a  
 Nevada limited liability company,

- ☒ Affects Martifer Aurora Solar, LLC  
☒ Affects Martifer Solar USA, Inc.  
☐ Affects All Debtors

Case No. BK-S-14-10355-abl  
 and BK-S-14-10357-abl

Jointly Administered under  
 Case No. BK-S-14-10355-abl

Chapter 11

**[PROPOSED] ORDER RE:**

1580756\_2 (7479-14)

- 1 -

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A.

**DEBTORS' MOTION FOR INTERIM  
AND FINAL ORDER PURSUANT TO  
11 U.S.C. §§ 361, 362 AND 363 AND  
FED. R. BANKR. P. 4001(b) and  
4001(d): (I) AUTHORIZING  
DEBTORS TO USE CASH  
COLLATERAL AND PROVIDE  
ADEQUATE PROTECTION; (III)  
GRANTING RELATED RELIEF;  
AND (III) SCHEDULING FINAL  
HEARING**

The Court, having reviewed and considered Debtor Martifer Aurora Solar, LLC's Motion for Interim and Final Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors To Use Cash Collateral and Provide Adequate Protection; (III) Granting Related Relief; and (III) Scheduling Final Hearing [Dkt. 25] and Debtor Martifer Solar USA, Inc.'s Motion for Interim and Final Order Pursuant To 11 U.S.C. §§ 361, 362 and 363 and Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing Debtors To Use Cash Collateral and Provide Adequate Protection; (III) Granting Related Relief; and (III) Scheduling Final Hearing [Dkt. 24] (collectively the "Motions"), all other papers and pleadings and evidence submitted in connection with the Motions, the oral arguments of counsel at the hearing held on January 28, 2014, with appearances as noted in the record and with all other findings set forth in the record at the hearing incorporated herein, pursuant to Fed. R. Civ. P. 52, made applicable to these proceedings by Fed. R. Bankr. P. 7052; and for good cause appearing therefore:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the Motions are granted in part, on an interim basis, pending a final hearing of the Court and with the following restrictions:

1. The final hearing shall be held on March 10th, 2014, at 9:30 a.m.;
2. The debtors' authorization to use cash collateral pursuant to this interim order shall expire on March 10, 2014;
3. The amount of cash collateral authorized to be used by the Debtors during the interim period shall not exceed the total operating disbursements in weeks 2 through 8 of the



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A.

debtor's 13-week cash flow projection budget found at [Dkt. 24, Exhibit 2 and Dkt. 25, Exhibit 2], a true and correct copy of which is attached hereto as **Exhibit "A"** and incorporated herein by reference ("Budget");

4. As partial adequate protection for the use of Cathay Bank's cash collateral, Cathay Bank shall be granted a replacement lien in the Debtor's post-petition assets to secure any diminution in value of Cathay Bank's secured claim caused by the Debtors' use of Cathay Bank's cash collateral in accordance herewith; the replacement liens afforded to Cathay Bank shall not extend to avoidance actions;

5. As partial adequate protection for the use of Cathay Bank's cash collateral, Cathay Bank shall be granted a super-priority administrative claim as additional security for any diminution in value of Cathay Bank's secured claim cause by the Debtor's use of Cathay Bank's cash collateral in accordance herewith;

6. As partial adequate protection for the use of Cathay Bank's cash collateral, the Debtors shall make the interest payments to Cathay Bank set forth in the Budget which are reflected as due during weeks 2 – 8 of the Budget;

7. Neither the debtor nor any creditor committee is restricted from using cash collateral to challenge perfection, validity, priority, amount, or enforceability of any secured claim; and

8. All findings of fact and conclusions of law set forth in the record with respect to this interim order are interim and all parties shall have the right to challenge these finding and conclusions for purposes of the hearing on the final order.

**IT IS SO ORDERED.**

Submitted by,

By: \_\_\_\_\_

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- 3 -

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Cathay Bank*

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**APPROVED/DISAPPROVED:**

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By: /s/ J. Michal Bloom, Esq.  
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**UNITED STATES DEPARTMENT OF  
JUSTICE**  
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*Attorneys for the United States Trustee  
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*Attorneys for Interested Party Martifer  
Solar, Inc.*

1580756\_2 (7479-14)

- 4 -

1 LR 9021(c) Certification:

2 In accordance with LR 9021, counsel submitting this document certifies that the order  
3 accurately reflects the court's ruling and that (check one):

4 \_\_\_\_\_ The court has waived the requirement set forth in LR 9021(b)(1).

5 \_\_\_\_\_ No party appeared at the hearing or filed an objection to the motion.

6   X   I have delivered a copy of this proposed order to all counsel who appeared at the  
7 hearing, and each has approved or disapproved the order, or failed to respond, as  
indicated below:

8 J. Michal Bloom, Esq. Samuel A. Schwartz, Esq.  
9 Trial Attorney for Acting U.S. Trustee, The Schwartz Law Firm, Inc.  
Tracy Hope Davis Attorneys for Interested Party Martifer  
Solar, Inc.

10  
11 Micaela Rustia Moore, Esq.  
12 Fox Rothschild LLP

13 *[Proposed] Counsel for Martifer Solar*  
14 *USA, Inc. and Martifer Aurora Solar,*  
15 *LLC*

16 \_\_\_\_\_ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this  
17 order with the motion pursuant to LR 9014(g), and that no party has objected to  
the form or content of the order.

18 # # #